HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.13127 of 2007

Between:

V. Narasimham and another. …Petitioners

And

Greater Hyderabad Municipal Corporation,
represented by its Commissioner, Hyderabad
and another. …Respondents

:: O R D E R ::

Counsel for the petitioners : Sri Ganta Ramakrishna

25th June, 2007

Per G.S. Singhvi, C.J.

In all developed and developing countries, great emphasis has been laid on the planned development of cities and urban areas. In developed countries, the objective of planned development has been achieved by rigorous enforcement of plans prepared after thorough study of complex issues and scientific research and rationalization of laws by way of legislative enactments. The people of those countries have greatly contributed to the concept of planned development by strictly adhering to zoning and building regulations. They, by and large, exhibit total respect for the system based on rule of law and seldom there is a complaint of violation of the building/zoning regulations while constructing buildings, residential or commercial. The situation in developing countries like ours is substantially different. Though the legislatures have, from time to time, enacted laws for ensuring planned

development of the cities and urban areas, the same have been violated with impunity. In the last four decades, almost all cities, big or small, have seen un-planned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned plans. In most of the cases of illegal and unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions or the sanctioned plans and those who directly or indirectly support such violations are perhaps totally unmindful of the grave adverse consequences on the present as well as future generations of the people living in un-planned cities. They do not realize that once a building is constructed in violation of the relevant laws or sanctioned plan or is used for a purpose other than the one specified in the Master Plan or Zonal Development Plan, a chain of reactions occurs. Such constructions put unbearable burden on the public facilities like water, electricity, sewerage etc. apart from creating chaos on the roads. If the area earmarked for parking in multistoreyed buildings, apartments and complexes is used for commercial activities, the residents and/or users of the buildings are compelled to park their vehicles in side lanes and public roads, which are meant to be used by the general public. As a consequence, others for whose benefit side lanes etc. are constructed are compelled to use main roads leading to traffic congestion and accidents resulting in loss of human lives. The pollution caused due to traffic congestion affects the health of road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They

suffer from skin diseases, Asthma, Allergy and even more dreaded diseases like Cancer. It can only be a matter of imagination how much the government has to spend on controlling pollution and adverse impact on the environment of the area caused due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions.

In **K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi**[1], the Supreme Court considered whether the Town Planning Scheme framed under Madras Town Planning Act, 1920 could be violated by the Municipal Council and permission granted for construction of a cinema building in a residential area. While dealing with the objection raised by the builder to the locus standi of the petitioner on the premise that the mere grant of licence to construct a cinema building will not cause any injury to the resident and he cannot seek intervention of the Court till the building is actually used as cinema hall, the Supreme Court observed:

> "The appellant can challenge at the threshold when the Scheme which is framed for the benefit of the residents in that area is violated by the Municipality. The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative."
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> (Underlining is ours)

The Supreme Court then considered whether the illegal

construction of a cinema building materially affects the right to enjoyment of the property by persons residing in their area and held:

> "An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases."

The Supreme Court also rejected the plea of the respondent that the building construction in violation of the Town Planning Scheme should not be disturbed because the petitioner has spent huge money over it and held:

> "The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent 3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in **Maddison v. Alderson {(1883) 8 AC 467}** said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable."

In **Dr. G.N. Khajuria v. Delhi Development Authority**[2], the Supreme Court held that allotment of land reserved for park in a residential colony for nursery school amounted to misuse of power and was liable to be quashed. Their Lordships further held that the mere fact that some construction had already been raised by the allottee was not relevant for determining the legality of the allotment.

In **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu**[3], the Supreme Court considered the question whether the construction of underground shopping complex in a park is legally permissible. While declaring that the construction was illegal and upholding the direction of the High Court for demolition thereof, their Lordships of the Supreme Court laid down the following propositions:

" 1) By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain as is required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done.

2) The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in **Span Resort case {M.C. Mehta v. Kamal Nath (Span Resort case) – (1997) 1 SCC 388}**. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the Constitution.

3) Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika.

4) No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of

judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

Rejecting the plea of the builder that it had made huge investment for construction of underground shopping complex, the Supreme Court observed:

"In this case the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (ix-a) of Section 114 of the U.P. Municipal Corporation Act, 1959."

In **Friends Colony Development Committee v. State of Orissa**[4], the Supreme Court emphasised the need of planned development of the cities in the following words:

"In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented

from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

The Supreme Court then took cognizance of the large number of illegal constructions made in the city of Cuttack in violation of the Master Plan and sanctioned plan and held:

"Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same
time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance."

In **M.C. Mehta v. Union of India**[5], the Supreme Court

emphasized the need of strict adherence to the Master Plan prepared by the experts after taking into account various aspects like healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. and held that residential houses cannot be converted into commercial shops and residential properties cannot be used for commercial and trading activities.

In **S.N. Chandrasekhar v. State of Karnataka**[6], the Supreme Court interpreted the provisions of Karnataka Town and Country Planning Act, 1961 and held that the plot earmarked for residential purpose cannot be converted into commercial by allowing the allottee to start a restaurant.

Unfortunately, despite repeated adverse judgments by the Supreme Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the legislative wing of the State. As and when the courts have passed orders or the officers of local bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions or taken action for demolition of the illegal/unauthorised constructions, the State has come forward to protect the interest of these people either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such laws have done irreparable harm to the concept of planned development of the cities and urban areas. If the representatives of the people do not take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of

affluent class of builders and others, even the rural areas of the country will soon witness similar chaotic conditions.

So far as the State of Andhra Pradesh is concerned, the concept of planned development has gone haywire in almost all the cities including Hyderabad, Visakhapatnam, Vijayawada and Warangal on account of unchecked illegal and unauthorised constructions. In most of the cases, the officers of the Corporation and Hyderabad Urban Development Authority (so far as the twin cities of Hyderabad and Secunderabad are concerned) and similar bodies in other Corporation areas have miserably failed to check illegal and unauthorised constructions. In over 5,000 cases in the twin cities of Hyderabad and Secunderabad, the violators of master plan, zonal plan and sanctioned plans have succeeded in raising construction under the guise of interim orders passed by the civil courts. It should be a matter of concern of all right-thinking people that this should be so despite enactment of various statutes by the legislature for planned development of the local areas. Hyderabad has already become an important I.T. hub and a number of multi-national companies are vying to set up their establishments in the city and nearby areas. If the menace of illegal and unauthorised construction goes unabated, not only the common man would suffer, but investors will also turn to other cities.

We have prefaced adjudication of the writ petition filed by the petitioners for quashing notice dated 15-6-2007 issued by the Commissioner, Greater Hyderabad Municipal Corporation under Section 452(2) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') because, after perusing the averments contained in the affidavit of petitioner No.1, V. Narasimham and hearing Sri Ganta Ramakrishna, we are convinced that the writ petition is wholly meritless and is liable to be dismissed summarily.

Petitioner No.1 claims to have purchased property bearing H.No.1-2-56/57 & 58, Domalguda, Hyderaba, from Sri Pingi Madhusudhana Reddy and others vide registered sale deed dated 1-3-

1973. After demolishing the old construction, he applied for permission to construct new building. The competent authority of the then Municipal Corporation of Hyderabad granted permission for construction of parking and three floors. However, in utter violation of the sanctioned plan, petitioner No.1 constructed fourth floor and pent house and also violated the Building Bye-laws, 1981 and made deviations.

In the year 2005, the then Municipal Corporation of Hyderabad initiated action for stopping the illegal construction, petitioner No.1 filed suit for injunction in the Court of X Junior Civil Judge, City Civil Court, Hyderabad. He also filed I.A.No.715 of 2005 for temporary injunction and succeeded in persuading the learned Junior Civil Judge to pass the following order:

> "The Court doth order interim injunction restraining anybody acting through MCH officials from interfering with the construction or demolition of the suit schedule property if the construction is in accordance with the sanctioned plan."

Although the above reproduced order did not authorise petitioner No.1 to construct the building otherwise than in accordance with the sanctioned plan, but in complete disregard of the court's order and violation of the sanctioned plan, petitioner No.1 continued and completed construction of the fourth floor and pent house and also made deviations.

On 7-6-2007, the Commissioner, Municipal Corporation of Hyderabad (by that time this body had been converted into Greater Hyderabad Municipal Corporation) issued notice under Section 452 of the Hyderabad Municipal Corporation Act, 1955 requiring the petitioners to remove/pull down the unauthorised construction of the fourth floor and pent house. In his reply dated 13/14-6-2007, petitioner No.1 denied that he had constructed pent house. He relied on the order of injunction passed by X Junior Civil Judge, City Civil Court, Hyderabad and prayed that the notice be dropped. The Commissioner, Greater Hyderabad Municipal Corporation did not feel convinced with the reply and issued notice dated 15-6-2007 for demolition of the unauthorised structures within three days.

Sri Ganta Ramakrishna, learned counsel for the petitioners, argued that the notice impugned in the writ petition is liable to be quashed because exercise of power by the Commissioner under Section 452 of the Act is tainted by mala fides. He submitted that the Commissioner has initiated action against his clients at the instance of the neighbours who have been making complaints because of jealousy. Learned counsel then submitted that petitioner No.1 has constructed the building in accordance with the sanctioned plan and the minor deviations, if any, made cannot justify demolition of the entire structure more so because the suit for permanent injunction filed by him is pending in the civil court and the injunction order passed in I.A.No.715 of 2005 is still operative.

We have considered the arguments/submissions of the learned counsel, but have not felt impressed. Neither in his reply to notice dated 7-6-2007 nor in the affidavit filed in support of the writ petition, petitioner No.1 has denied the fact that as per the sanctioned plan he could construct parking area with three floors, but he has constructed fourth floor and also made deviations in violation of the building bye-laws. It is, therefore, reasonable to conclude that the construction made by petitioner No.1 is unauthorised. This being the position, we do not find any valid ground or justification to entertain the prayer for quashing the action initiated by the respondents for demolition of the unauthorised construction. It is trite to say that the constitutional remedies can be availed only by those who have respect for the law of the land and not to those like the petitioner who conduct themselves in violation of the laws enacted by the competent legislature and the rights of the fellow citizens. The concept of planned development, to which reference has been made in the earlier part of this order, casts a duty on every person aspiring to construct building to abide by the relevant statutory provisions, master plan, zoning plan and sanctioned plan apart from the building bye-laws. This is absolutely imperative for safeguarding the rights of others, protecting the environment and ecology and respecting the right to life guaranteed to the people under Article 21 of the Constitution. The

construction of building in violation of the statutory provisions and master plan etc. has serious adverse impact not only on the present generation, but future generation. Therefore, this Court cannot exercise its power under Article 226 of the Constitution of India and ordain the respondents not to demolish the unauthorised construction because that would amount to perpetuation of illegality committed by petitioner No.1.

Another argument of the learned counsel that the two notices issued under Section 452 of the Act are inconsistent inasmuch as the first notice did not make a mention of the deviations enumerated in the second notice, is without substance. A conjoint reading of the two notices makes it clear that the same authority had pointedly made a mention of the nature of the unauthorised construction and petitioner No.1 was not put to any prejudice on account of absence of enumeration of deviations in notice dated 7-6-2007. The absence of prejudice to petitioner No.1 can be inferred from the fact that he has not denied the allegations contained in the impugned notice.

We are further of the view that the writ petition is liable to be dismissed because petitioner No.1 is guilty of abusing the process of the Court. At the cost of repetition, we consider it necessary to mention that in terms of the order of injunction passed by the learned X Junior Civil Judge, City Civil Court, Hyderabad in I.A.No.715 of 2005, petitioner No.1 could have raised construction only in accordance with the sanctioned plan and not in violation thereof, but he contemptuously disregarded the condition imposed by the court and constructed fourth floor and pent house and also made deviations in clear violation of the sanctioned plan.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.16401 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

25th June, 2007

C.V. NAGARJUNA REDDY, J

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[1] (1974) 2 SCC 506
[2] (1995) 5 SCC 762
[3] (1999) 6 SCC 464
[4] (2004) 8 SCC 733
[5] (2006) 3 SCC 399
[6] (2006) 3 SCC 208